

Remarks

Claims 1-4, 7-12, 14, 16-23 are amended by the foregoing Amendment. The specification has been amended to conform to the amended claims and to correct minor errors in the specification. Entry of the Amendment and favorable consideration thereof is respectfully requested.

The present invention as set forth in the amended claims defines a method of measuring promotion response which specifically tests response to call frequency; the method tests the response independently of the content of any particular communications to customers. The method obtains a measurement that is useable to generate modified promotional and selling plans even when the salesforce alters a planned selling cycle by introducing variables due to their biases or knowledge.

The Examiner has rejected claims 2-3, 7-8, 10, 11, 14, 16, 17, 20-21 and 23 under 35 U.S.C. §112, second paragraph, on the grounds of a potential ambiguity regarding the relationship of the claimed "selected subset of customers" and the various claims to a "group of identified customers." By the foregoing Amendment, the rejected claims have been amended to clarify and specify the relationships between these various groups. It is submitted that the foregoing Amendments render the claims sufficiently definite and that the rejection should be withdrawn.

The Examiner has rejected claims 1-14 and 19-23 under 35 U.S.C. §101 as being directed to non-statutory subject matter. The case relied on by the Examiner, *Ex Parte Bowman*, 61 USPQ2d 1669 (Bd Pat App & Int 2001), is an unpublished opinion and is not properly relied on as a statement of binding precedent. Nevertheless, in accordance with the Examiner' suggestion, the claims have been amended to make it clear that the claimed invention relates to the technological arts. Specifically, claims 1, 9, and 19 have been amended to specify a process involving a computer and electronic lists. It is respectfully

submitted that the amendment does not present new matter as it elaborates on existing disclosure in the application which defines the invention as a software process.

The Examiner has rejected claims 1-23 35 U.S.C. §103 as obvious at the time of the invention. Claims 1, 5-9, 13-15 19, and 23 are rejected under 35 U.S.C. §103(a) over Roseman. "How To Establish Quality Control Over The Sales Force" in view of Anonymous, Marketing Telemarketing Awards 1997 Supplement. Claims 2-4, 10-12, 16-18, and 20-22 are rejected under 35 U.S.C. §103(a) over Roseman in view of Anonymous, and further in view of Bell, "I Want My MVT". These rejections are respectfully traversed.

Roseman discusses the concept of total quality control systems for controlling sales force efforts. The disclosed systems include basic concepts of ranking potential customers and setting call frequencies for customers based on relative rankings. Roseman does not disclose any systems for testing promotion response by alteration of call frequency.

Anonymous discusses National Tyres and Autocare Agency's use of a telemarketing call center to begin making calls on customers who had previously not been in regular contact with company sales representatives. This increased sales by 27.9% over a control group of customers who did not receive such communications. Anonymous does not disclose any systems for testing promotion response by alteration of call frequency using a specified contact frequency that is adjusted to provide an input to a sales staff which may – or may not – follow the specified contact list. Really all this reference reveals is that sales will increase when salesmen begin to call on customers.

In most promotion response systems there is complete control over how much promotion is made (like the catalogue example - they completely control content, but more importantly, they also completely control frequency (of sending catalogues to each customer). In medical sales forces, however, the number of calls to be made is "suggested." The actual number made can vary, based on salesman selection bias, etc. Because actual calls are different on a person by person basis, this means that typical multivariate techniques give the wrong answer. The solution is to run an experiment. But in Anony-

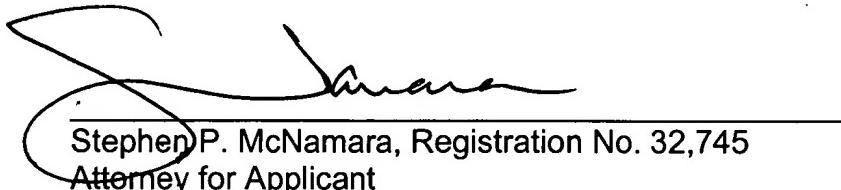
mous, the disclosed system uses direct control of total calls - and therefore cannot determine promotional response within the various subgroups of customers that were called on.

Bell discusses the concept of multivariable testing. The examples given where multivariable testing techniques have been applied are all controlled experiment situations, such as a printed catalog where the content of the catalog is precisely defined, and tele-marketing where a fixed script is employed. In each case, the testing is testing of specific marketing material, not the frequency of the marketing efforts. As noted above, the present invention tests changes in call frequency without regard to content; it then uses multi-variable testing to analyze results of use of the method, but that does not mean that the disclosure of Bell makes the invention obvious.

The Examiner's rejection is a classic example of improper "hindsight" analysis, using the disclosure of the present invention to assemble an obviousness rejection from fragments of ideas in prior art references. A fair reading of the disclosures of the cited references simply does not disclose or suggest the claimed invention. In particular, the Examiner reads far more into the disclosure of Anonymous than is truly present. The Examiner's inference that Anonymous is testing promotion response testing response to call frequency within a system where the salesforce alters a planned selling cycle by introducing variables due to their biases or knowledge is incorrect. The method of the invention set forth in the amended claims we propose has three unique characteristics that make it different. (1) It is "indirect" – it works through suggested calls, not actual calls - thus it is easier to implement in many situations. (2) It is less obvious which customers get increased numbers of calls (or decreased numbers of calls), so the "experiment" itself does not distort the results. (3) The method randomizes which customers get the increases/decreases, which allows the marketer to test the promotional response of subgroups - not just "we got sales by calling on all the people we hadn't called on before" which is all that can be discerned from the method of Anonymous.

Accordingly, for all of the foregoing reasons, the rejection of claims 1-23 should be withdrawn. It is respectfully submitted that the cited prior art does not disclose or suggest the claimed invention, and that it would not have been obvious to make the claimed invention. It is respectfully requested that a Notice of Allowance be issued as to claims 1-23 of the application.

Respectfully submitted,



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Stephen P. McNamara, Registration No. 32,745  
Attorney for Applicant  
ST. ONGE STEWARD JOHNSTON & REENS LLC  
986 Bedford Street  
Stamford, CT 06905-5619  
203 324-6155